ROBERT L. BAYLESS

IBLA 97-15 Decided August 31, 1999

Appeal from a decision of the Deputy Director, Division of Resource Planning, Use, and Protection, New Mexico State Office, Bureau of Land Management, upholding an order to produce documents relating to production. SDR 96-022 (New Mexico).

Set aside and remanded.

1. Federal Oil and Gas Royalty Management Act of 1982: Royalties--Indians: Mineral Resources: Oil and Gas: Royalties--Oil and Gas Leases: Production--Oil and Gas Leases: Royalties

   BLM is authorized by section 101(c)(1) of FOGRMA and 43 C.F.R. §§ 3162.4-1 and 3162.7-5(b)(6) to order the lessee of Indian oil and gas leases to produce source documents, procedures, and formulas used to calculate the volumes of gas produced from the leases as reported on MMS production forms. However, when the record in a case fails to provide a rational basis for requiring the production of records for a 72-month period for a production accountability review, the decision directing production will be set aside and the case remanded to BLM to allow it to establish a more reasonable time frame for production of documents.

APPEARANCES: Tommy Roberts, Esq., Farmington, New Mexico, for appellant; Jill E. Grant, Esq., Washington, D.C., for Intervenor Jicarilla Apache Tribe.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

Robert L. Bayless has appealed from a September 16, 1996, decision of the New Mexico State Office, Bureau of Land Management (BLM), upholding an order issued on July 1, 1996, by the Rio Puerco, New Mexico, Resource Area Office (RPRAO), to submit documentation of production operations for Indian leases connected to Bayless' Otero Gathering System.

RPRAO's July 1, 1996, order, addressed to Bayless, states as follows:

> The Bureau of Land Management (BLM) is the agency responsible for ensuring the correct reporting of production from oil and gas leases operated on Federal and Indian lands. In order to meet this objective, the BLM has developed a Production Accountability Review (PAR) program on selected Federal and Indian oil and gas properties to determine how accurately your production records match the volumes you reported on the [Minerals Management Service (MMS)] Monthly Report of Operations (Form MMS-3160).
>
> Your operations on the referenced leases [(Otero Gas Gathering System (Jicarilla Contract 38, 39, 45, 77 and 78))] have been selected as part of our review of all off-lease measurement gathering systems and at the request of the Jicarilla Apache Tribe. Your cooperation and assistance will be appreciated. In accordance with the requirements of 43 CFR 3162.7-5(b)(6), you are ordered to submit the following source documents, procedures, and formulas used to calculate the volumes of gas reported on the 3160(s) for the 72-month period of June 1990 through May 1996.
>
> a. Monthly Chart Integration Volume Statements for each well.
>
> b. Meter calibration reports for each well.
>
> c. Methods used to estimate volumes of gas Flared, Vented, or otherwise Lost.
>
> d. Methods used to estimate volumes of gas Used on Lease.
>
> e. List equipment on the lease that uses gas, by well location.
>
> f. Manufacturer's MCF rating of production equipment.

RPRAO's decision went on to cite 43 C.F.R. §§ 3162.4-1(a), 3162.4-1(d), and 3162.7-5(b)(6), as authority for this request.

Bayless sought review by the New Mexico State Director pursuant to 43 C.F.R. § 3165.3. He argued that, in view of the large number of wells (44) attached to the Otero Gas Gathering System, RPRAO's requirement for document production was overly burdensome, and that there was no reason why 6 to 12 months of document production would not allow BLM to determine whether his production records matched the volumes he reported on his MMS-3160 forms.

By decision dated September 16, 1996, the Deputy Director, Division of Resource Planning, Use, and Protection, New Mexico State Office, BLM, issued the decision presently under appeal. He held:

> Title 43 CFR 3162.4-1(a) requires an operator to keep accurate and complete records with respect to leases including, but not limited to, production facilities and producing operations. Subpart (b) states that the operator shall submit copies of these records upon request by the Authorized Officer. Subpart (d) also requires an operator to maintain such records for a period of six (6) years from the date they were generated.
>
> During a previous production accountability review for a similar central delivery point type system, involving off-lease measurement and commingling of gas production from Jicarilla Tribal leases operated by Bayless, numerous discrepancies in production reporting were noted. In order to fulfill our trust responsibilities to the Tribe, it is necessary to conduct as complete a production accountability review on the Otero Gas Gathering System, and the associated Jicarilla leases, as possible. The production information that was specified in the July 1, 1996 Order is necessary to fulfill our Trust responsibility.

The Deputy Director accordingly upheld RPRAO's order that documents be produced.

Bayless timely appealed the Deputy Director's decision to this Board. By order dated November 15, 1996, we suspended the effect of BLM's decision pending review of the appeal. By order dated December 19, 1996, we granted the motion of the Jicarilla Apache Tribe (Tribe) (lessor of the leases at issue herein) to intervene in the matter as a respondent.

[1] BLM has broad authority to issue orders requiring production of documents under the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. §§ 1701 through 1757 (1994). Section 101(c)(1) of FOGRMA, 30 U.S.C. § 1711(c)(1) (1994), requires the Secretary of the Interior and his designated delegates to "audit and reconcile, to the extent practicable, all current and past lease accounts for leases of oil or gas." See also 43 C.F.R. § 3162.4-1. In enacting FOGRMA, Congress clearly sought to avoid a royalty accounting and collection system operating entirely on the honor principle, with no verification of production and sales data, since this sort of arrangement had led to underreporting of production and sales in the past. See H.R. Rep. No. 859, 97th Cong., 2d Sess. 15, 16 (1982), reprinted in 1982 U.S. Code Cong. & Admin. News 4269-70. Instead, the statute required the Secretary and his delegates to audit and reconcile lease accounts. Congress, however, was also aware that "auditing every account on an annual basis is clearly impractical." H.R. Rep. No. 859, 97th Cong., 2d Sess. 33 (1982), reprinted in 1982 U.S. Code Cong. & Admin.

News 4287. With this practical consideration in mind, the Secretary was to audit and reconcile accounts only "to the extent practicable." 30 U.S.C. § 1711(c)(1) (1994). See Texaco, Inc., 138 IBLA 26, 28-29 (1997); Texaco Exploration & Production, Inc., 134 IBLA 267, 269 (1995).

In BHP Petroleum (Americas) Inc., 124 IBLA 185, 187 (1992), we held that FOGRMA does not restrain the Secretary from directing a royalty payor to review royalty accounts in order to unearth underpayments traceable to an identified defect in the payor's original computation of royalties due. We also approved MMS' practice of sampling certain leases or production months, leaving the payor the burden of uncovering all other instances of systemic deficiency. Id. at 88; see also Texaco Exploration & Production, Inc., 134 IBLA at 269-70; Amoco Production Co., 123 IBLA 278, 281-84 (1992).

Furthermore, the court in Phillips Petroleum Co. v. Lujan, 963 F.2d 1380, 1386 (10th Cir. 1992), specifically rejected Phillips' argument that MMS had required it to perform an impermissible "self-audit" in contravention of FOGRMA. The court approved MMS' procedure of requiring lessees to correct repeated royalty underpayments caused by systemic deficiencies, finding that such a request "falls squarely within the purposes of the FOGRMA." Id.

However, we have expressly held that BLM's demand for production of documents must be supported by a rational basis. Harvey E. Yates Co., 135 IBLA 373, 380 (1996). Appellant charges that it is not in this case.

The original July 1, 1996, demand for production of documents stated only that the documents were necessary to allow BLM to determine how accurately appellant's production records matched the volumes reported on the Monthly Report of Operations (Form MMS-3160). In his decision, the Deputy State Director stated that in a previous production accountability review for a similar central delivery point type system operated by Bayless "numerous discrepancies in production reporting were noted." (Decision at 2.) He concluded that the production information required by the July 1, 1996, order was "necessary to fulfill our Trust responsibility." Id.

Appellant argues that "trust responsibility" has no relevancy to the issue of whether there is a rational basis for a demand for production of documents. We agree. While the Department does have a trust responsibility to the Tribe, that responsibility alone cannot serve as the basis for such a request. The stated purpose in this case is to determine if production accountability problems exist. Appellant contends that production of 72 months of records is unnecessary to make such a determination and that it can adequately and reasonably be made based upon an examination of documents covering a far shorter period of time.

Appellant states that there are 44 wells connected to the Otero Gathering System and that BLM's order would require him "to submit 3,168

documents to satisfy the first element of the Order alone, i.e., Monthly Chart Integration Volume Statements for each well." (Statement of Reasons
at 2.) He estimates personnel and copying costs to provide those statements to be $500, with additional personnel and copying costs associated with producing the further requested documentation. He asserts that if the purpose of the order "is to determine how accurately Bayless' production records match the volumes Bayless reported on Form MMS-3160, then there is no reason why 6 months or 12 months of documentation production would not allow that determination to be made." Id.

Numerous discrepancies in production reporting for another system operated by Bayless might serve as a rational basis for requiring production of all the records for the system involved in this case; however, appellant contends that he "has, on more than one occasion, explained the volume differentials." (Response to Answer of the Tribe at 3.) He also states that he has argued in other appeals before this Board that "those volume differentials are inherent in BLM-approved plans of off-lease measurement and surface commingling," citing various docket numbers, including IBLA 97-127 and IBLA 97-128. Id.

In Robert L. Bayless, 143 IBLA 267 (1998), the Board's decision addressing IBLA 97-127 and IBLA 97-128, we reversed two decisions by the New Mexico BLM State Director upholding two decisions of the Rio Puerco Area Manager notifying Bayless that BLM had completed production accountability reviews on Bayless' Companero and Gasbuggy Gathering Systems relating to certain Jicarilla Tribal leases for the period January 1993 through June 1995, and that it had determined that Bayless had improperly underreported volumes of gas production on both systems during that period. Therein, we stated at 272: "We also find that Bayless has provided a reasonable explanation of the disparity between wellhead and sales meter readings which has not been rebutted or otherwise addressed by BLM, despite their opportunity to do so."

The purpose of a production accountability review is, as stated by BLM in its July 1, 1996, order, "to determine how accurately your production records match the volumes you reported on the Monthly Report of Operations (Form MMS-3160)." Thus, the review is undertaken to uncover any discrepancies in production reporting. If discrepancies exist, Bayless should be given the opportunity to provide an explanation. We know from the Bayless case cited above that the data provided by Bayless for the Companero and Gasbuggy Gathering Systems did not provide a basis for finding that Bayless had improperly underreported gas volumes for the leases involved in that case, in the face of the explanation provided by Bayless.

In light of the Board's finding in Bayless and based on BLM's stated purpose for demanding the production of 72 months of documentation in this case, we conclude that the present record fails to provide a rational basis for requiring the requested documents covering a 72-month period. Clearly,

BLM may reasonably assess whether or not production accountability problems exist by reviewing less than 72 months of documentation for the Otero
Gathering System. 1/ Should BLM determine that unexplainable discrepancies exist, it may then require production of all 72 months of documentation.

The dissent provides some plausible arguments in support of BLM's decision, none of which has been made by BLM. The record shows that BLM can make an accurate assessment of Bayless' compliance through production of less than 6 years of records. Should the initial PAR uncover any unexplained inconsistencies, BLM may direct the production of all 6 years of records. 2/ This is not a situation in which failure to initially review 6 years of records will allow Bayless to escape any potential liability. In fact, nowhere does BLM or the Tribe argue otherwise. By seeking less than 6 years of records at this juncture, BLM can still protect the Tribe's interests and relieve the lessee of an onerous burden. 3/ BLM should be attempting to do both. We continue to believe in the viability of our decision in Yates, supra. BLM must provide a rational basis for a decision demanding the production of documents. In this case, the decision does not, and the case record, at best, is ambiguous regarding the present necessity for production of 6 years of documents. The dissent does the best possible job of providing a rationale for BLM's action. Unfortunately, we are the Secretary's adjudicators, not his counsel.

1/ The case file contains a memorandum to Joe Incardine, the Chief, Land and Minerals Branch, Rio Puerco Resource Area, from Allen Buckingham, a BLM employee, dated June 17, 1996, detailing a meeting with David Wong, identified as the Jicarilla Tribal accountant. The date of the meeting is reported as June 24, 1996, an obvious error. However, Buckingham states:

"I asked him how the Tribe would feel if we only asked for 3 months production history from each of the 44 wells for the 6 year period. This was our consideration at Kevin McCord's request to cut down on the paperwork required. Then if I discovered large discrepancies, ask for the entire 12 month period for each year. He SUGGESTED that we ask for the entire 12 month period to begin with because based on our findings with the other systems we would eventually probably need the entire production history."

2/ In a memorandum to Incardi, dated May 6, 1996, Buckingham provided details of a telephone conversation with Wong:

"I told him the 6 yr requirement could be argued but that we in the BLM thought that 3 mos for each of the 6 years in question is reasonable for JIC 38. He never really gave me an answer except what if the production was wrong. I told him we could start with 3 mos each year, if we found a lot of discrepancies, then we could request the other months."

3/ In a June 24, 1996, memorandum to Incardi from Buckingham recounting another meeting with Wong, Buckingham stated: "I told him we would be asking for over 4,000 documents (OTERO) covering a period of July 90 - 31 May 96 (wellhead measurement effective 1Jun96). He showed no concern whatsoever about the workload of furnishing 4,000 documents to the BLM put on the operator."

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision appealed and the underlying order are set aside and the case is remanded to BLM for a determination of a more reasonable time frame for which documents must be produced. Should BLM, on remand, determine that production of 6 years of records are necessary, it should include in its decision requiring those documents a rational basis for its request.

_____
Bruce R. Harris
Deputy Chief Administrative Judge

I concur:

_____
C. Randall Grant, Jr.
Administrative Judge

ADMINISTRATIVE JUDGE HUGHES, DISSENTING:

The record in this case shows that there were substantial questions about the accuracy of Bayless' reporting of volumes of production of natural gas from wells attached to the Otero gathering system at the time the Rio Puerco Resource Area Office, Bureau of Land Management (BLM), ordered Bayless to produce 72 months of documentation covering the period June 1990 through May 1996. On February 15, 1996, the Jicarilla Apache Tribe (Tribe) notified BLM that there was a "precipitous drop in production levels on one of the tribal leases producing into the Otero system as soon as Bayless took operations over from Conoco on that lease." (Tribe Answer at 3, Ex. 1). On April 17, 1996, BLM wrote Bayless, setting out that fact and requesting an explanation, and also demanding monthly chart integration volume statements and monthly purchaser's gas volume statements for each well in Jicarilla Contract 38 for the 84-month period from December 1988 through November 1995, pursuant to 43 C.F.R. § 3162.4-1(a) and (d) and § 3162.7-5(b)(6). 1/ A letter dated the same day from BLM to the Tribe (which, as lessor, had demanded an explanation from BLM, which managed the lease on its behalf) shows that BLM was unable, in the absence of a response from Bayless, to do more than speculate about why decreased production had been reported.

If Bayless responded to BLM's April 17, 1996, demand for information, its response is not in the record. A copy of a BLM "e-mail" dated May 6, 1996, strongly suggests that Bayless refused to respond, showing that a Bayless representative told a BLM employee that he considered the request for information "vindictive," since the Tribe "already knows what the answer is," and that 3 months would be a "reasonable amount of information."

On May 3, 1996, an internal BLM memorandum reported that its "audits have turned up 400,000 MCF of gas not reported by operators," and noted that "Bayless' operations are consistently 12-14% less volume measured at the central delivery point than the sum of the well-head measurements." It appears that BLM referred here to alleged underreporting by Bayless across all of its gathering systems. BLM had been aware of discrepancies in volume reporting since 1993, following a Minerals Management Service (MMS) audit, 2/ and it was well known by BLM and Bayless that the Tribe was objecting to the continuation of volume measurement techniques, which reduced the amount of royalty it collected.

1/ The case record states that the Otero gathering system is "part of" Jicarilla Contract 38. (E-mail dated May 6, 1996, from Allen Buckingham to J. Incardi.)

2/ We noted as follows concerning the Cabresto gathering system in Robert L. Bayless, 138 IBLA 210, 212 n.5 (1997):

"The record shows that BLM became aware of discrepancies in volume reporting as a result of an audit conducted by the Dallas Area Audit Office (DAAO), MMS. By memorandum dated July 15, 1993, DAAO advised BLM's FRAO [Farmington Resource Area Office] that its 'audit disclosed that Bayless was using an off-lease measurement point to pay royalties instead of the

Thus, at the time of BLM's July 1, 1996, order, the accuracy of Bayless' measurement of production was very much in doubt across all of its gathering systems. BLM had been approached by an Indian lessor, to which it undeniably owed a fiduciary duty, 3/ noting a fact that suggested that there might have been underreporting of volumes, which would, of course, result in underpayment of royalties to the lessor. BLM, based on its own and MMS' previous review of Bayless' operations, also had reason to suspect that volumes were being underreported. The information demanded by BLM in that order (described in the majority opinion) was consistent with inquiries both into whether the volume of gas had been accurately measured, and if so, into whether any demonstrated loss of volume was "avoidably lost." 4/

---

fn. 2 (continued)
wellhead meters,' resulting in under-reporting of sales volumes by 50,761 thousand cubic feet (mcf) for 2 test months on eight Jicarilla leases. When DAAO ordered Bayless to recalculate the royalties for all Jicarilla leases using the wellhead measurement, Bayless appealed, stating that on Aug. 13, 1992, BLM had approved the off-lease measurement point. MMS' memorandum further stated that, according to MMS payor instructions, Bayless was 'required to calculate and pay royalties at the BLM approved measurement point.' However, BLM's approval of the off-lease measurement point 'will result in the Jicarilla Tribe's being paid on approximately 25,000 Mcf per month less than if measured at the wellhead.'"

3/ The court in Assiniboine and Sioux Tribes v. Board of Oil and Gas Conservation, 792 F.2d 782, 794 (9th Cir. 1986), has clearly defined the Department's obligations in this matter:

"The Indian Mineral Leasing Act of 1938, 25 U.S.C. § 396a-396g, is a detailed and comprehensive act that imposes extensive responsibilities on the government in tribal mineral leasing matters for the benefit of Indians. See Blackfeet Tribe of Indians v. Montana, 729 F.2d 1192, 1199 & n.18 (9th Cir. 1984) (en banc), aff'd, [471 U.S. 759], 105 S.Ct. 2399, 85 L.Ed.2d 753 (1985); Jicarilla Apache Tribe v. Supron Energy Corp., 728 F.2d 1555, 1564-65 (10th Cir. 1984) (Seymour, J., concurring in part and dissenting in part), dissenting opinion adopted as the majority opinion as modified, 782 F.2d 855 (10th Cir. 1986) (en banc). Taking into account these specific, congressionally-imposed duties, and the long-standing, general trust relationship between the Government and the Indians, we conclude that a fiduciary relationship exists in the management of tribal mineral resources. See Jicarilla, 728 F.2d at 1563-65 (statutes and regulations contain such explicit duties that it is clear Congress intended Secretary to act as trustee in managing leases for the Indians); cf. United States v. Mitchell, 463 U.S. 206, 224-26, 103 S.Ct. 2961, 2971-73, 77 L.Ed.2d 580 (1983) (statutes establish fiduciary duty of the management of Indian timber resources.)
(Footnote omitted.)

4/ Under 30 C.F.R. § 202.150(b), royalty is not due on gas unavoidably lost or lease-use gas.

The record (quoted by the majority) also shows that BLM officials initially had doubts about the need to require Bayless to produce documents from all 72 months, but that, after consultation with the Indian lessors, changed their minds. It is unclear why the majority believes that BLM was bound by its initial assessment of the need for production of further documents, or why it was improper for BLM to accede to the Tribe's suggestion that data was needed for each month.

Bayless made no significant effort to challenge the Area Office's decision before the State Director or in its statement of reasons on appeal to this Board. It simply asserted that the request was "overly burdensome" and complained that no reason was given in the order why 72 months of documentation were necessary to make the stated determination. No explanation was offered as to the reported "precipitous drop" in production; nor was any data provided that might show that volume differences in the context of the Otero gathering system resulted from meter inaccuracies or the unavoidable loss of production. The closest Bayless has come to such an explanation is the following statement, appearing in its response to the answer filed by the Tribe as intervenor:

> The primary issue with respect to the auditing of production accounting on Bayless-operated gas gathering systems located on the Jicarilla Apache Reservation has always been the volume differential between volumes measured at central delivery points and volumes measured at wellheads. As Bayless has argued in other appeals pending at the IBLA, those volume differentials are inherent in BLM-approved plans of off-lease measurement and surface commingling. [5/]

The majority agrees with Bayless' assertion that BLM did not adequately justify its order to produce 72 months of data and evidently accepts his claim that the differential was adequately explained previously, placing great stock in the fact that we accepted an explanation in our decision in Bayless II. Bayless II concerned BLM's finding that, by reporting volume as measured at an off-lease production point on two other, different gathering systems (the Companero and Gasbuggy systems), Bayless had improperly underreported volumes of gas production. We found that, at least in that case, Bayless' explanation of the discrepancy in volume measurements at the well-head and at the off-lease collection points was not rebutted or otherwise addressed by BLM and, moreover, that BLM had specifically approved the measurement of production volumes at the off-lease measurement points.

The record here indicates that, as in Bayless II, BLM had approved measurement of volume for royalty purposes off-lease (rather than at the

---

5/ Bayless cited appeals that have now been resolved in Robert L. Bayless, 138 IBLA 210 (1997) (Bayless I), and Robert L. Bayless, 143 IBLA 267 (1998) (Bayless II).

well head). However, the record also shows that approval was effective only on and after April 12, 1993. Thus, the question remains whether production was properly measured for royalty purposes prior to that approval. That fact alone would justify the collection of data for a period extending back to 1990.

Furthermore, information was needed to assess the independent but equally important question whether production was, in fact, unavoidably lost. See 43 C.F.R. § 3162.7-1(d). The majority fails to take into account that BLM's order to produce information was also clearly intended to develop data on that critical question. By relying on our holding in Bayless II, the majority disregards that information concerning production losses on the Otero gathering system would be site-specific and might vary substantially from that presented in Bayless II concerning the Companero and Gasbuggy systems.

BLM's request for the production of 72 months of data is not burdensome, since (as the majority acknowledges) lessees are required by regulation to maintain records for 6 years from the date they were generated. See 43 C.F.R. § 3162.4-1(d). BLM's request does not go beyond what Bayless was required by law to maintain in any event.

The majority disregards two judicial decisions holding that the agency's need to ensure that royalty has been correctly calculated and that the law has not been violated is, by itself, an adequate justification for it to demand the production of relevant documents under section 101(c)(1) of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA). 6/ See Shell Oil Co. v. Babbitt, 125 F.3d 172 (3rd Cir. 1997), and Santa Fe Energy Products Co. v. McCutcheon, 90 F.3d 409 (10th Cir. 1996) (citing United States v. Morton Salt Co., 338 U.S. 632, 642-43 (1950), referring to "the breadth of an agency's ability to gather information which is analogous to a Grand Jury's power to 'investigate merely on suspicion that the law is being violated, or even just because it wants assurance that it is not'"). This Board has also recently held that MMS' failure to expressly state in a demand letter why documents were required, such failure could be overlooked where it was otherwise evident from the record that they were needed to ensure that royalty obligations to Indian lessors had been met. See NGC Energy Resources, Limited Partnership, 149 IBLA 217, 224 (1999). Both BLM and MMS are authorized by FOGRMA to collect data.

These decisions compel a relaxation of our previous view in Harvey E. Yates, 135 IBLA 373, 380 (1996), relied upon by the majority, that MMS or BLM must make a specific showing of error before it can require production of documents. 7/ The present case record contains adequate justification

---

6/ The agency in those cases was MMS.

7/ See also Amoco Production Co., 123 IBLA 278, 294 (1992) (A.J. Hughes, concurring ("[T]here must be, at a minimum, some evidence of irregularity to justify the type of demand for information that is under attack")).

for BLM to require production of documents for the entire 72-month period, in order to fulfill its Indian trust responsibility to the Tribe as lessor and ensure that Bayless was properly measuring royalty volume and that production was not being avoidably lost. As the Court held in Assiniboine and Sioux Tribes v. Board of Oil and Gas Conservation, supra:

> The United States, as the Tribes' fiduciary, is held to strict standards and is required to exercise the greatest care in administering its trust obligations. See Mitchell, 463 U.S. at 225-28, 103 S.Ct. at 2972-74, United States v. Mason, 412 U.S. 391, 398, 93 S.Ct. 2202, 2207, 37 L.Ed.2d 22 (1973); Nance, 645 F.2d at 710; F. Cohen, Handbook of Federal Indian Law 225-26 (1982 ed.).

782 F.2d at 794. In considering BLM's order to produce documents, we must err on the side of approving broad requests, in order to ensure that BLM has the information necessary to "exercise the greatest care in administering its trust obligations."

It is worth noting in closing that we have previously faulted BLM for taking adverse action against Bayless without first obtaining adequate evidence of wrongdoing. See, e.g., Bayless I, 138 IBLA at 218. In the present case, BLM was simply seeking to assemble such evidence, or at least to ascertain whether such exists. The case law and respect for BLM's efforts to protect the interests of the Indian lessor here both dictate that we should not limit that effort.

I would affirm the order to produce documents for the entire 72-month period.

_____

David L. Hughes
Administrative Judge